

Calgary Registry

File no. T-1577-11

FEDERAL COURT

ADMIRALTY ACTION
IN REM and IN PERSONAM

ALAN TONEY, YVONNE TONEY,
and COURTENAY TONEY & REBECCA TONEY
as represented by their litigation guardian ALAN TONEY

AND

PLAINTIFFS

HER MAJESTY THE QUEEN IN RIGHT OF CANADA IN THE NAME
OF THE ROYAL CANADIAN MOUNTED POLICE, and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA
AS REPRESENTED BY

THE MINISTER OF SUSTAINABLE RESOURCE DEVELOPMENT, and
THE CANADIAN SHIP BEARING LICENCE NO. AB1275024

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

CLAIM

1. The Plaintiffs claim is for damages in excess of \$50,000, including:
 - a. General damages for personal injury, including nervous shock, post-traumatic stress disorder and major depressive disorder;
 - b. Damages for loss of past income;
 - c. Special damages;
 - d. Damages for cost of future care;
 - e. Bereavement damages pursuant to s.8(2)(b) of the *Fatal Accidents Act (RSA 2000 c.-8)*;
 - f. Admiralty interest at the prime rate compounded semi-annually;
 - g. Arrest and condemnation of the Defendant Ship for the purposes of evidence at trial;
 - h. Costs; and
 - i. such further and other relief as this court deems just.

THE PARTIES:

2. The Plaintiffs are a closely-knit family (father, mother and two minor daughters, respectively) resident in Chestermere, Alberta, and have as an address for service the offices of Darren Williams, solicitor, at 531 Quadra Street, Victoria, British Columbia, V8V 3S4.
3. The Defendant, Her Majesty the Queen in Right of Canada in the name of the Royal Canadian Mounted Police (hereafter the "RCMP"), has an address for service care of its Chief Executive Officer at 284 Wellington Street, Ottawa, Ontario K1A 0H8.
4. The Defendant, Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister of Sustainable Resource Development, inclusive of the said Minister's Division of Fish and Wildlife (hereafter collectively "F&W") has an address for service at 9902 – 108 Street, Edmonton, Alberta Canada T5K 2M4, and the Attorney General of Alberta.
5. The Defendant vessel, an 1800 series Crestliner Super Hawk aluminum fishing boat, manufactured in 2008, bearing Canadian licence no. AB1275024 1, measuring 5.5m in

length and 2.4m breadth (hereafter the "F&W Vessel"), was at all material times owned and operated by F&W.

THE DUTIES:

6. At all material times the RCMP were responsible, under mandate of the Government of Canada, for coordinating, supervising and carrying-out inland marine search and rescue on Lake Newell, near Brooks, Alberta.
7. At all material times, the Defendant RCMP, its employees and agents, owed a duty of care to the Plaintiffs, being ordinary recreational users of Lake Newell, which duty included, but was not limited to:
 - a. initiating, managing, and participating in inland marine search and rescue operations on Lake Newell in a manner commensurate with the skill and diligence of trained marine search and rescue professionals;
 - b. training, and providing trained RCMP personnel, to carry out inland marine search and rescue operations on Lake Newell in a manner commensurate with the skill and diligence of trained marine search and rescue professionals;
 - c. equipping, maintaining, and utilizing search and rescue equipment in inland marine search and rescue operations on Lake Newell in a manner commensurate with the skill and diligence of trained marine search and rescue professionals; and
 - d. such other duties as are enumerated in the course of this action.
8. At all material times the RCMP requested the assistance of F&W to conduct inland marine search and rescue operations on Lake Newell, and F&W agreed and participated in such search and rescues operations willingly.
9. At all material times the Defendant F&W, its employees and agents, owed a duty of care to the Plaintiffs, which duty included, but was not limited to:
 - a. acting, or not omitting to act, in the course of a marine search and rescue operation in a manner commensurate with the skill and diligence of trained marine search and rescue professionals, or alternatively, someone who has willfully taken on the role of a marine search and rescuer; and
 - b. such other duties as are enumerated in the course of this action.

THE INCIDENT:

10. On September 27, 2008 the Plaintiffs, along with the deceased Janessa Lynn Toney (daughter of Alan Toney and Yvonne Toney, and sister to Courtenay Toney and Rebecca Toney), who was then 5 years old, visited Lake Newell near Brooks, Alberta (the "Lake") for a day of touring the Lake on their 18' pleasure-craft.
11. The Lake is a reservoir made in 1914, measuring 16 kilometres long north to south, and 6.6 kilometres wide (at it widest) east to west. The Lake rests 14 kilometres south of the City of Brooks Alberta, and 190 kilometres southeast of Calgary. The Lake is surrounded by low-lying prairie, with little vegetation, and often experiences moderate winds and waves. The Lake is a popular recreation site, with an adjoining Provincial Park, and recreational boating is a common activity.
12. At about 5:00pm on September 27, 2008, the stern drive leg of the Toney family's boat (the "Toney Boat") struck a submerged object and was disabled. The Toney Boat drifted on the Lake while Mr. Toney attempted to fix the Toney Boat. The Toney Boat was not taking on water. The Toney family had food, clothing, blankets and drinking water. The Toney family was not in danger, but required assistance in returning to the boat launch at Kinbrook Park on the eastern-shore of Lake Newell, approximately 5 kilometres away.
13. At about 5:45pm, after being unable to repair the vessel's leg, Mr. Toney called 911 for assistance. Shortly after placing the 911 call Mr. Toney received a call from the Brooks RCMP detachment stating two vessels were being dispatched to assist them. The Toney family drifted and fished to pass the time while waiting for assistance.
14. In response to the Toney's call, the attending RCMP Constable contacted the Alberta Parks Department, who did not have available staff to operate their Parks vessel that was stationed near Lake Newell. The Constable then contacted a F&W Officer ("F&W Officer") for assistance.
15. Despite being responsible for marine search and rescue on the Lake, the largest lake in southern Alberta, the Brooks RCMP detachment did not own or operate their own search and rescue vessel or a vessel of any type. The attending RCMP Constable:
 - a. was aware the RCMP had the mandate for inland marine search and rescue;
 - b. was aware of the fact that the Lake was the largest and most highly utilized Lake in the area for which the Brooks Detachment was responsible;

- c. had no training regarding boats or boating;
 - d. had no training or experience in search and rescue techniques or management; and
 - e. had no familiarity with the Lake, its geography, weather or characteristics.
16. The RCMP Constable and the F&W Officer met at Kinbrook Park and the F&W vessel was launched at about 7:00pm on September 27, 2008. A peace officer from the City of Brooks (the "Peace Officer") attended with the F&W Officer as an observer or ride-along. The Peace Officer could not swim.
 17. Neither the RCMP Constable nor the F&W Officer had checked the weather before leaving the boat launch at about 7:00pm on September 27, 2008 to retrieve the Toney family. The F&W Officer had checked the weather earlier that afternoon and had decided it was too rough to carry out a patrol on the Lake, but did not investigate the weather further.
 18. At about 7:00pm the Toney Boat drifted ashore at a location south-west of Pelican Island on the southern shore of Lake Newell. Unbeknownst to the Toney family they beached approximately 10 city blocks from Range Road #153, an all-weather, publicly accessible gravel road. The Toney family was safe at this time, with shelter under the canopy of the beached boat, as well as food, water, warm clothes and a telephone.
 19. The weather that day was windy later in the afternoon, but not unusual for the Lake. There were many boats on the lake, some involved in a sailing regatta, including search and rescue boats owned by the attending sailing association. Winds reported at the Brooks weather station, 14 kilometres to the north, topped out at 30km/h. Waves on the lake were reported by several people 1.5 to 4 feet, and reported by one as 6 feet high.
 20. The F&W Officer was aware the F&W Vessel had never been operated in similar weather conditions with more than 2 people aboard it. The F&W Vessel had previously been operated with as many as 5 people on it, but only in calm conditions.
 21. The load capacity for the F&W Vessel was 1,380 pounds for "crew and gear" in "fair weather" according to the Transport Canada decal on aboard the Vessel. The weight of the 8 passengers and crew (not including gear) that were ultimately taken aboard the Vessel before it capsized on September 27, 2008 was 1,120 pounds, comprised of:

F&W Officer:	170 lbs
RCMP Constable:	200 lbs

Peace Officer:	190 lbs
Mr. Toney:	205 lbs
Mrs. Toney:	150 lbs
Courtenay Toney	100 lbs
Rebecca Toney:	60 lbs
<u>Janessa Toney:</u>	<u>45 lbs</u>
Total:	1,120 lbs.

22. The F&W Officer who was operating the F&W Vessel considered the weights of the passengers and crew before leaving the Kinbrook Park to retrieve the Toney family. He estimated the vessel could have 250 pounds of excess capacity and concluded the vessel could safely make a return trip with the 8 persons. This conclusion did not change at any point in the operation before the capsizing. This conclusion did not account for any weight other than passengers.
23. The F&W Vessel carried gear (including anchor and ground tackle, and enforcement equipment), the weight of which was unknown to the F&W Officer when he left the dock at Kinbrook Park (or later, the beach at Pelican Island). The F&W Vessel left the dock with a full tank of fuel. None of these weights were accounted for by the F&W Officer in concluding the F&W Vessel could safely return with the 8 passengers.
24. When leaving the boat launch at Kinbrook Park the RCMP Constable and the F&W Officer both understood that the RCMP Constable was in command of the operation to retrieve the Toney family, and the F&W Officer was in charge of the operation of the F&W Vessel. Despite this, there was no discussion between the RCMP Constable and F&W Officer of what the operational plan actually was, or if a water extraction was the safest and most effective means of returning the Toney Family safely to Kinbrook Park. The RCMP Constable believed the plan was to tow the Toney vessel back to the boat launch. The F&W Officer believed the plan was to bring the Toney family back aboard the F&W Vessel. Neither assessed whether a water-based operation was necessary, or if it was, what the safest means to carry it out were.
25. The F&W Vessel traveled from Kinbrook Park to the Toney's location near Pelican Island and upon arrival the RCMP Constable and F&W Officer attempted to pull the Toney Boat holding the Toney family out of shallow water, but was unable to dislodge the beached Toney Boat. The Defendants moved the Toney family from their location on the Toney Boat and placed them in the F&W Vessel. The Toney Boat was secured to the shore by the RCMP Constable and the F&W Officer before the F&W Vessel began the return trip, of approximately 7 kilometres, across Lake Newell to Kinbrook Park at 7:40pm.

26. On the return trip, the F&W vessel headed approximately east from Pelican Island until the vessel was near the eastern shore of Lake Newell, before turning north past Jack Fish Bay and over shoals southwest of Kinbrook Park towards the boat launch at Kinbrook Park.
27. While at Pelican Island the F&W Officer noticed the propeller on the F&W Vessel had been damaged on rocks sometime after leaving Kinbrook Park. During the trip east and north back to the Park the F&W Officer found it necessary to adjust the trim of the outboard frequently in order to maintain effective thrust through the waves. Trimming of the motor caused the bow to rise and the stern to sink, or vice versa, depending on how the motor was trimmed. The F&W Officer did not consider what effect the damaged propeller and the required trimming would have on the F&W Vessel's ability to handle the sea-state, before leaving Pelican Island.
28. Waves entered the F&W Vessel along both the eastern and northern legs of the trip back to Kinbrook Park, with increasing amounts of water entering the F&W Vessel along the northern leg of the trip. The F&W Officer activated the bilge pump immediately after the vessel left the Pelican Island area, but after turning north, the Peace Officer reported 2 to 4 inches of water had accumulated above the floor boards in the stern of the vessel. At this time, more than 1,000 pounds of water-weight in excess of the weight of "crew and gear" was in the F&W Vessel. Despite this the F&W Officer made no order to bail the F&W Vessel and did not alter course away from the oncoming waves.
29. The Peace Officer saw water flowing in over the transom at times on the return trip. Water was seen by the F&W Officer to slosh back and forth above the floor boards in the stern of the F&W Vessel. With waves causing water to come over the bow the F&W Officer ordered the Peace Officer to move to the stern of the F&W Vessel, where he sat on or near the transom.
30. As the F&W Vessel neared shoals approximately one kilometer running-distance southwest of the Kinbrook Park boat launch, the Vessel took a large wave over the port bow, swinging the Vessel 180 degrees to starboard, which was followed by another wave over the starboard stern. The Peace Officer reported the stern of the vessel was completely submerged, and as the F&W operator called for passengers to move to the bow, the F&W Officer reached beneath the water for more life jackets in the mid-ship floor compartment and a subsequent wave immediately capsized the vessel. The time was 8:00pm.
31. The shoals, being a submerged shallow offshore area of the Lake, south-west of Kinbrook Park were known to the F&W Officer as being an area where waves were higher than on other parts of the Lake at the same time. Despite this, the course selected by the F&W Officer took the F&W Vessel either on, or immediately down-wind of the

shoals.

32. Prior to capsizing the F&W Vessel had continued in its northerly course towards the boat launch notwithstanding the water was accumulating in the vessel faster than the bilge pump could remove it. The F&W Vessel was not turned south to run with the weather (or away from the shoals) or east to seek safe shelter in Jack Fish Bay. Nothing prevented the F&W Officer from doing so.
33. All the parties on the Vessel had life jackets on. Alan Toney and Yvonne were momentarily trapped beneath the F&W Vessel, but quickly swam free of the F&W Vessel. Mr. Toney climbed aboard the overturned Vessel immediately and placed a 911 call, which was recorded as a "hello" on the emergency response system at 8:08pm, but his phone was rendered inoperative by the water.
34. All of the occupants of the Vessel swam free of the Vessel except for Janessa Toney, who could not be seen. The occupants of the Vessel searched for Janessa Toney in the water surrounding the overturned Vessel, but she could not be located.
35. Alan and Yvonne Toney heard Janessa Toney screaming and calling their names from beneath the F&W Vessel. Alan Toney and Yvonne Toney told the RCMP Constable and the F&W Officer that Janessa Toney was beneath the F&W Vessel, but the RCMP Constable insisted Janessa Toney was floating nearby. The screaming continued and the voice was heard to call for help and call the names of "mummy" and "daddy". Mr. Toney attempted to swim underneath the overturned F&W Vessel but was unsuccessful on an initial attempt and subsequently was disallowed from doing so by the RCMP Constable. The RCMP Constable attempted to reach beneath the F&W Vessel but could not because of the buoyancy of a marine immersion suit he has donned prior to leaving the Kinbrook Park boat launch.
36. The F&W Vessel drifted with the Toney Family and the RCMP Constable and F&W Officer either on or next to the F&W Vessel for several hours with the voice of Janessa Toney being heard. The Plaintiffs continued to hear Janessa Toney crying and calling for them as the Vessel drifted on the Lake.
37. Neither the RCMP Constable nor the F&W Officer carried waterproof communications devices, or signaling devices of any kind. The Peace Officer, unable to swim, but wearing a life jacket, had drifted away from the F&W Vessel and out of ear-shot. Janessa Toney continued to be heard by the Plaintiffs and the RCMP Constable and the F&W Officer.
38. At approximately 9:00pm on September 27, 2008, when the F&W Vessel was overdue in

returning, the Brooks RCMP Detachment contacted the supervising member ("RCMP Corporal") on duty to report the missing RCMP Constable. The RCMP Corporal met with the Deputy Chief of the Brooks Fire Department on Kinbrook Park, who had launched a small inflatable boat belonging to the fire department to locate Toney family, but had returned to the boat launch after suffering damage.

39. The attending RCMP Corporal, who commanded the rescue following the capsizing of the F&W Vessel,
 - a. was aware the RCMP had the mandate for inland marine search and rescue;
 - b. was aware of the fact that the Lake was the largest and most highly utilized Lake in the area for which the Brooks Detachment was responsible;
 - c. had not been trained or notified by the RCMP, and did not otherwise know, that the City of Calgary Fire Department and Dive Team were search and rescue assets at her disposal;
 - d. had not been trained or notified by the RCMP, and did not otherwise know, that the Shock Trauma Air Rescue Society ("STARS") was a search and rescue assets at her disposal;
 - e. had no training regarding boats or boating;
 - f. had no training or experience in search and rescue techniques or management; and
 - g. had no familiarity with the Lake, its geography, weather or characteristics.
40. At 10:30pm STARS search and rescue helicopter service contacted the RCMP Corporal to offer their assistance. The STARS helicopter would not have communicated with the RCMP Corporal but for their own initiative, having been monitoring emergency communication channels.
41. Despite being in command of the search and rescue effort to locate the missing F&W Vessel and its occupants, including the Toney family, through lack of training and knowledge, the RCMP Corporal failed to make any command decisions in coordinating a search and rescue.
42. At 10:51pm the RCMP Corporal was contacted by the Calgary Fire Department dive team offering assistance. The Calgary Fire Department dive team would not have communicated with the RCMP Corporal but for their own initiative, having been

monitoring emergency communication channels and communicating with STARS. As a result of lack of training of the RCMP Corporal, the RCMP Corporal declined the assistance of the dive team.

43. At 11:20pm the STARS helicopter arrived on scene at Lake Newell. At approximately 11:40pm STARS located the capsized F&W Vessel, which by then been adrift for since 8:00pm.
44. At 11:55pm a boat, belonging to a Brooks fire Department employee (the "Rescue Vessel"), arrived at the capsized Vessel under the spotlight of the STARS helicopter.
45. While the Rescue Vessel was still at the capsized F&W Vessel, Alan Toney and the F&W Officer stated that Janessa Toney was under the F&W Vessel. A volunteer fireman attempted to dive under the F&W Vessel, but the RCMP Constable ordered that he not.
46. The Rescue Vessel left the scene of the capsized F&W Vessel to return the survivors to Kinbrook Park, but the RCMP Corporal failed to order the marking of the location of the capsized F&W Vessel before the Rescue Vessel departed for shore. Due to this failure to mark the drifting F&W Vessel, the vessel could not later be relocated without significant delay.
47. The seven survivors (the Plaintiffs, the RCMP Constable, the F&W Officer and the Peace Officer) arrived back at the boat launch aboard the Rescue Vessel at 12:20am.
48. Upon arrival at the boat launch the RCMP Constable briefed a RCMP Staff Sergeant and the RCMP Corporal on the events, including telling the RCMP Staff Sergeant and the Corporal that he had he concluded Janessa Toney was under the F&W Vessel. At this briefing the F&W Officer also told the RCMP Staff Sergeant he believed Janessa Toney was under the Vessel. In addition, Alan Toney told the RCMP Staff Sergeant that Janessa Toney was under the F&W Vessel and asked the Staff Sergeant to dispatch divers to search the F&W Vessel.
49. Approximately 10 minutes after it arrived at the dock with the survivors, the Rescue Vessel left the dock (12:30pm) with the RCMP Constable aboard. The RCMP Constable was permitted to return to the search on the Lake by the Staff Sergeant because the RCMP Constable advised the RCMP Staff Sergeant he believed Janessa Toney was still under the F&W Vessel.
50. After the Rescue Vessel left Kinbrook Park with the RCMP Constable aboard to locate the F&W Vessel and Janessa Toney, the STARS helicopter searched the Lake before breaking-off at 12:50am to refuel approximately 10 kilometres away at the Brooks

Hospital.

51. Despite being advised by the RCMP Constable, the F&W Officer and Mr. Toney at 12:30am, that Janessa Toney will likely under the F&W Vessel, neither the RCMP Corporal nor the RCMP Staff Sergeant advised the searching STARS helicopter of this. While at the Brooks Hospital, the STARS crew learned, for the first time, from interviewing the Peace Officer who had been admitted to the hospital, that Janessa Toney was likely under the F&W Vessel. Upon learning this information at the Brooks Hospital, the STARS helicopter left immediately for the Lake.
52. At 1:00am the RCMP Staff Sergeant spoke with the Calgary Fire Department dive team and advised the dive team its services were not needed. The Staff Sergeant did this having concluded Janessa Toney did not need be located by a dive team because she was presumed to be floating away from the F&W Vessel. The Staff Sergeant did so without informing the dive team that at least three people (the RCMP Constable, the F&W Officer and Alan Toney) had told him they believed Janessa Toney was trapped under the F&W Vessel, Alan Toney had expressly asked when the dive was arriving, and the Vessel's whereabouts was known. The RCMP Staff Sergeant also had no training or experience in search and rescue implementation or management.
53. STARS arrived back at the Lake at 1:20am and searched for the capsized F&W Vessel, which it located at 1:45am.
54. Because search and rescue command, being the RCMP, had not ordered the capsized F&W Vessel be marked when the occupants were located at 11:45pm, there was a delay of approximately 1.25 hours in relocating the drifting F&W Vessel and Janessa Toney. Although the Rescue Vessel left the boat launch at 12:30am to relocate the F&W Vessel, it could not locate the F&W Vessel until the STAR helicopter returned, despite the Lake and wind having calmed.
55. Upon STARS relocating and lighting the capsized F&W Vessel at approximately 1:45am the Rescue Vessel and the RCMP Constable arrived back at the capsized F&W Vessel and received a request from the Brooks Fire Department at 2:10am (at the prompting of STARS) to feel under the F&W Vessel for Janessa Toney, but no effort was made to locate Janessa Toney under the F&W Vessel.
56. At 2:27am the RCMP Constable ordered the Rescue Vessel to tow the capsized F&W Vessel into shallower water to check under the F&W Vessel. At 2:30am the RCMP Corporal, who commanded the search and rescue, was advised that the RCMP Constable has ordered the vessel towed to the Kinbrook boat launch. The RCMP Corporal made no effort to assess, or contradict the Constable's order to the Rescue Vessel.

57. The RCMP Constable had no idea where on the Lake the Rescue Vessel and the F&W Vessel was when he ordered the F&W Vessel be towed, or how long it would take to reach the boat launch. Despite being advised by the Rescue Boat operator it would take "a long time" to reach the boat launch, and despite believing that Janessa Toney was under the F&W Vessel, the RCMP Constable maintained his order that the F&W Vessel be towed to the boat launch.
58. Under command of the RCMP Constable, the capsized F&W Vessel was towed by the bow, in a bow-up, stern-down position, which with the wash from the towing vessel's propeller, experienced sufficient turbulence under the capsized vessel that the RCMP Constable kept watch for any objects that he believed might emerge in the wake behind the tow. The tow reached the boat launch, where the Plaintiffs were waiting on the beach, at 4:38am; two hours after the tow began. The F&W Vessel was righted using the hook of a tow truck, and Janessa Toney's body was recovered from the beneath the stern of the F&W Vessel, and taken to the Plaintiffs who were waiting nearby.
59. Janessa Toney was transported by the STARS helicopter to the Foothills Hospital in Calgary, where she was subsequently pronounced dead by drowning, and not by hypothermia or other cause.
60. But for the negligent planning and implementation by the Defendants of the retrieval, and the consequential search and rescue, of the Toney family, Janessa Toney would not have perished as she did, and the Plaintiffs would not have experienced and suffered her death in the manner they did.
61. Following the September 27, 2008 incident, none of the Plaintiffs were communicated with, in any manner, by any of the Defendants, or other parties involved in the incident. It was not until the Alberta Attorney General ordered an inquiry pursuant to the *Fatality Inquiries Act (RSA 2000)* and the Inquiry was held between May 24 and June 1, 2011 that the Plaintiffs learned of any details regarding the cause the incident. As such the Plaintiffs plead the doctrine of discoverability, or alternatively rely on s.140 of the *Marine Liability Act (SC 2001, c.6)*.

THE DEFENDANTS' BREACHES:

62. The Defendant RCMP, and its employees and agents, breached its duties to the Plaintiffs by:
 - a. failing to identify and utilize the reasonably safest method, means and route for

retrieving the Plaintiffs, which said breach resulted in the assumption of unnecessary risk with foreseeable results, including;

- i. failing to assess whether a water extraction was the necessary or best means of retrieving the Plaintiffs when a land extraction was available and convenient;
 - ii. failing to assess whether the F&W Vessel was an appropriate and safe vessel for the purpose, given the characteristics of the F&W Vessel, the weight of the occupants and equipment, and the effects of typical and actual weather and waves;
 - iii. failing to assess whether the route taken to return to Kin brook Park, across the shoals south-west of Kinbrook Park, was a reasonably safe route;
 - iv. failing to assess, on an ongoing basis, whether the operation of the F&W Vessel, being operated as it as, was being done in a reasonably safe manner in the circumstances;
 - v. failing to assess and correct the course of the Vessel when it was evident the course of the Vessel towards Kinbrook Park before capsizing was resulting in the flooding of the Vessel, and safe harbour or other courses being available;
 - vi. failing to equip and utilize readily available and inexpensive marine search and rescue equipment such as waterproof hand-held VHF and other signaling devices; and
 - vii. otherwise failing to exercise reasonable care commensurate with a search and rescue professional;
- b. failing to train its personnel in search and rescue methodology and management, while being aware of its mandate over inland search and rescue, and the likelihood that such training would foreseeably be needed on the largest and most popular lake within its Southern Alberta jurisdiction;
 - c. failing to task properly trained personnel to the subject retrieval, and subsequent search and rescue operation, with said breach materially contributing to the capsizing of the F&W Vessel, and directly causing avoidable and unnecessary delay in the recovery of the Vessel and its occupants;
 - d. failing to provide proper equipment to its personnel expected to be engaged in marine

search and rescue;

- e. failing to use, in a timely manner, available reasonable means in the retrieval and subsequent search and rescue of the Plaintiffs, including:
 - i. other available and suitable search and rescue vessels and personnel in the immediate area;
 - ii. airborne search and rescue resources such as STARS; and
 - iii. dive team resources.
- f. such other breaches as are discovered in the course of these proceedings.

63. The Defendant F&W breached its duties to the Plaintiffs in:

- a. failing to identify and utilize the reasonably safest method, means and route for retrieving the Plaintiffs, which said breach resulted in the capsizing of the Vessel and the foreseeable death of Janessa Toney, including:
 - i. failing to assess whether a water extraction was a necessary means of retrieving the Plaintiffs when a land extraction was available;
 - ii. failing to assess whether the F&W Vessel was an appropriate and safe Vessel for the purpose given the characteristics of the Vessel, the weight of the occupants, and the weather and wave conditions;
 - iii. failing to assess whether the route taken to return to Kinbrook Park, across the shoals south-west of Kinbrook Park, was a reasonably safe route;
 - iv. failing to assess or correct the course of the Vessel when it was evident the course of the Vessel towards Kinbrook Park immediately before capsizing was resulting in the obvious flooding of the Vessel, and safe harbour being available;
 - v. failing to exercise reasonable care commensurate with a search and rescue professional;
 - vi. such other acts or omissions as will be discovered in the course of this action;

- b. overloading the F&W Vessel given the wind and wave conditions, and otherwise operating the F&W Vessel in such a manner as swamping and/or capsizing of the Vessel was likely, and did in fact occur; and
- c. such other breaches as are discovered in the course of these proceedings.

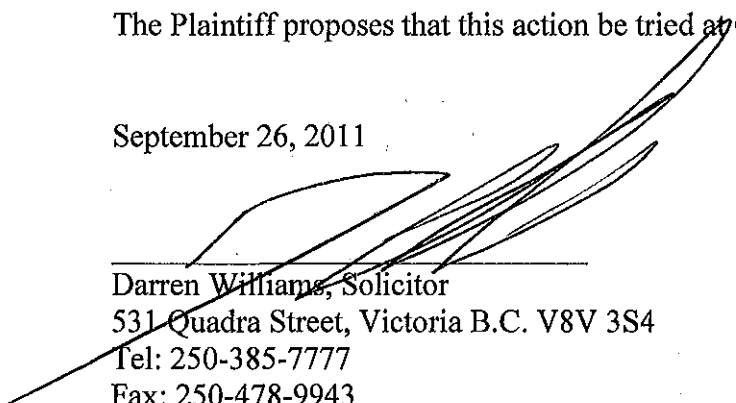
THE PLAINTIFFS' INJURIES & DAMAGES

- 64. As a result of the Defendants' breaches, the F&W Vessel capsized, the search and rescue of the Plaintiffs was avoidably and unnecessarily delayed, the F&W Vessel was towed when it need not have been, and consequentially Janessa Toney perished by drowning.
- 65. As a result of the negligence of the Defendants and the consequential death of their daughter Janessa Toney, Alan Toney and Yvonne Toney claim for bereavement damages pursuant to s.8(2)(b) of the *Fatal Accidents Act (RSA 200, c.F-8)*, and plead the principle of discoverability, as per those facts in paragraph 61 above.
- 66. As a result of the Defendants' negligence, the Plaintiffs Alan Toney and Yvonne Toney suffered the following reasonably foreseeable injuries:
 - a. nervous shock;
 - b. post-traumatic stress disorder;
 - c. major depressive disorder;
 - d. such other injuries as the Plaintiff's care providers may discover in the course of this proceeding.
- 67. In the alternative to damages for nervous shock or traumatic neurosis, Alan Toney and Yvonne Toney claim for elevated damages for pain and suffering due to the prolonged and direct manner in which they experienced the death of Janessa Toney.
- 68. As a result of the Plaintiffs' aforesaid injuries, Alan Toney and Yvonne Toney:
 - a. have suffered past lost wages;
 - b. has suffered special damages; and
 - c. will incur costs of future care.

69. As a result of the Defendants' negligence, which caused the capsizing of the Vessel and the death of Janessa Toney, the Plaintiffs Courtenay Toney and Rebecca Toney suffered the following reasonably foreseeable injuries:
- a. nervous shock;
 - b. post-traumatic stress disorder;
 - c. such other injuries as the Plaintiff's care providers may discover in the course of this proceeding.
70. In the alternative to damages for nervous shock or traumatic neurosis, Courtenay Toney and Rebecca Toney claim for elevated damages for pain and suffering due to the prolonged and direct manner in which they experienced the death of Janessa Toney.
71. As a result of the Plaintiffs' aforesaid injuries, the Courtenay Toney and Rebecca Toney:
- a. have suffered delays and loss of performance in their education;
 - b. has suffered special damages; and
 - c. will incur costs of future care.
72. As a result of the Defendant's breaches Alan Toney and Yvonne Toney have incurred special damages, including:
- a. expenses related to burial and memorial services for Janessa Toney;
 - b. costs related to counseling and psychiatric treatment for themselves and Courtenay Toney and Rebecca Toney; and
 - c. legal expenses in relation to the May 24 - June 1, 2011 inquiry under the *Fatalities Inquiry Act* referred to in paragraph 61 above.

The Plaintiff proposes that this action be tried at Calgary, Alberta

September 26, 2011



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Calgary Registry

File no. : _____

FEDERAL COURT

ADMIRALTY ACTION

IN REM and *IN PERSONAM*

ALAN TONEY, YVONNE TONEY,
and COURTENAY TONEY and REBECCA TONEY
as represented by their litigation guardian ALAN TONEY

PLAINTIFFS

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA IN THE NAME
OF THE ROYAL CANADIAN MOUNTED POLICE, and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA
AS REPRESENTED BY
THE MINISTER OF SUSTAINABLE RESOURCE DEVELOPMENT, and
THE CANADIAN SHIP BEARING LICENCE NO. AB1275024

DEFENDANTS

STATEMENT OF CLAIM

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